

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION**

**TEXAS IP RESEARCH, LLC,
Relator,**

v.

**PENTAIR, INC., et al.,
Defendants.**

Civil Action No. 5:11-cv-00015

JURY TRIAL DEMANDED

FIRST AMENDED COMPLAINT FOR FALSE PATENT MARKING

Relator Texas IP Research, LLC (“Relator”) makes the following allegations against Pentair, Inc. and Pentair Water Pool and Spa, Inc., and any of their affiliated companies, including but not limited to subsidiaries (collectively, “Pentair” or “Defendant”):

NATURE OF THE ACTION

1. This is a *qui tam* action for false patent marking under 35 U.S.C. § 292.

PARTIES

2. Relator is a Texas limited liability company.
3. On information and belief, Pentair, Inc. is a Minnesota corporation with its principal place of business at 5500 Wayzata Boulevard, Suite 800, Golden Valley, MN 55416. Pentair, Inc. has not recorded an agent for service of process in Minnesota.

4. On information and belief, Pentair Water Pool and Spa, Inc. is a subsidiary of Pentair, Inc. and is a Delaware corporation with its principal place of business at 1620 Hawkins Avenue, Sanford, NC 27330 and/or 10951 W. Los Angeles Avenue, Moor Park, CA 93021. Pentair Water Pool and Spa, Inc. has appointed Corporation Trust Center, 1209 Orange Street, Wilmington, DE 19801, as its agent for service of process.

JURISDICTION AND VENUE

5. This action arises under the patent laws of the United States, Title 35 of the United States Code. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

6. Defendant is subject to this Court's specific and general personal jurisdiction pursuant to due process and/or the Texas Long Arm Statute, due at least to its substantial business in this Forum, including: (i) at least a portion of the false marking, affixing, or advertising alleged herein; and/or (ii) regularly doing or soliciting business, engaging in other persistent courses of conduct, and/or deriving substantial revenue from goods and/or services provided to individuals in Texas and in this District.

7. Venue is proper in this district under 28 U.S.C. §§1391(b), 1391(c), and 1395(a). Defendant has and/or continues (and/or has and continues to cause others) to transact business in this District, and has and/or continues (and/or has and continues to cause others) to mark upon, affix to, and/or use in advertising, in this District, the product(s) subject to this First Amended Complaint, which Defendant has and/or continues (and/or has and continues to cause others) to make, use, offer for sale, or sell in, and/or import into, this District.

FACTS

8. Pentair has and/or continues (and/or has and continues to cause others) to mark upon, affix to, and/or use in advertising the following U.S. Patent Numbers as well as their foreign counterparts, and/or the words or phrases "patent," "patented," "patent pending," "patent applied for," "covered by one or more of the following patents," or any derivation thereof, patents that have expired and/or do not apply, such as the following patent numbers (collectively, "Accused Patent Markings"), in combination with products and related packaging and/or advertisements,

including, without limitation, catalogues, websites and other marketing materials (collectively, “Accused Pentair Products”), as illustrated below:

Accused Patent Markings		
PATENT NO.	PATENT NO.	PATENT NO.
3267622	3494395	3786521
3269466	3500696	3786998
3292673	3536943	3802075
3303861	3538964	3804332
3314312	3557954	3814330
3334669	3559350	3816677
3339598	3581784	3821918
3345784	3581787	3827510
3348432	3604482	3849943
3356111	3623518	3858383
3393309	3675849	3863342
3396826	3686524	3867988
3404574	3699655	3874412
3405745	3702740	3877500
3407857	3718168	3884094
3413498	3718405	3886716
3430084	3721141	3917967
3454061	3742768	3942251
3454143	3754493	3949644
3456696	3755829	3958594
3457796	3761794	3959879
3461732	3762231	3967814
3461930	3762830	3971132
3481438	3768649	3988244
3491422	3777354	3989154
3494394	3779668	3999828

PATENT NO.	PATENT NO.	PATENT NO.
4001937	4430389	4705629
4003710	4433812	4708258
4006752	4436126	4711032
4015633	4437499	4715573
4018256	4440200	4715789
4043101	4450397	4721444
4046260	4452117	4722673
4054766	4473213	4725354
4077434	4477236	4730753
4086551	4483483	4732175
4087210	4496822	4736869
4089171	4518558	4743320
4089220	4520842	4746776
4090963	4530033	4753726
4105367	4537681	4759474
4108386	4543623	4760962
4116475	4546302	4768888
4150598	4548227	4768930
4158628	4561624	4770770
4164723	4586624	4775302
4170246	4594361	4778369
4174100	4594392	4782569
4188046	4600184	4783720
4207647	4603717	4784371
4212214	4614279	4785913
4223402	4616369	4785956
4227148	4618316	4787479
4248115	4619171	4789127
4258414	4624997	4802819
4278858	4625609	4814033
4290451	4626175	4823951
4303515	4628605	4824342
4306968	4629841	4825605
4308777	4637435	4830589
4313825	4638886	4836240
4321660	4642614	4836249
4339231	4644746	4836931
4340039	4645601	4846045
4340853	4653691	4848213
4349153	4654142	4854259
4373212	4655693	4856394
4379704	4657184	4857189
4386395	4668930	4858661
4388997	4669616	4858662
4396512	4675788	4858663
4396881	4681006	4862026
4398564	4694720	4863328
4406468	4694721	4869678
4406628	4705468	4873770

PATENT NO.	PATENT NO.	PATENT NO.
4879943	5044566	5260545
4880144	5045033	5267658
4886242	5045187	5272609
4890982	5054687	5281101
4892431	5054740	5284997
4895998	5056375	5290443
4896016	5060501	5297004
4901200	5061090	5308386
4904382	5067591	5313370
4911840	5069041	5318703
4916270	5072851	5336850
4917421	5074767	5343777
4919176	5075614	5359955
4919338	5077513	5379795
4924354	5077853	5388903
4930309	5078373	5393548
4930982	5086208	5398167
4940877	5088299	5407263
4942274	5088691	5407323
4944534	5095260	5409606
4944887	5096083	5411661
4954054	5097924	5431204
4956086	5099675	5436406
4961269	5102543	5441337
4961712	5117741	5449280
4964433	5117880	5453027
4967303	5121852	5458467
4971368	5133639	5466315
4974332	5137434	5484079
4976192	5138914	5490463
4982509	5146807	5497852
4986128	5154300	5497852
4994132	5156280	5504656
4995523	5167041	5507617
5014372	5168205	5518679
5016693	5170894	5545952
5016825	5172944	5547528
5022831	5174383	5556497
5022837	5175389	5568878
5024585	5182720	5570481
5029814	5209365	5574334
5034853	5213468	5576513
5035281	5213469	5579700
5036428	5215429	5582042
5036677	5217202	5587888
5037009	5225078	5590687
5037317	5228762	5598594
5038893	5256287	5610367
5040563	5256833	5630632

PATENT NO.	PATENT NO.	PATENT NO.
5638848	5924602	6533540
5639392	5928512	6561062
5645174	5934091	6564428
5647415	5937981	6564999
5649342	5956784	6565793
5652008	5979521	6625833
5656159	5983417	6631787
5666695	5993983	6662945
5675475	6036290	6686748
5679920	6038953	6691336
5680055	6039364	6742625
5681151	6045334	6793095
5690818	6068358	6892921
5704100	6083037	6916190
5718564	6095776	6923364
5722121	6117332	6932196
5722787	6123274	6932391
5722962	6151212	6935642
5736194	6171423	6938809
5741005	6190598	6942472
5753071	6203302	6973681
5759387	6207893	6986407
5759414	6212958	7007773
5765669	6238025	7071409
5766454	6244055	7091638
5775880	6260519	7111913
5779105	6264122	7140817
5783071	6275634	7143508
5787923	6280619	7210752
5799339	6295980	7225936
5800702	6298553	D234515
5807008	6309296	D235544
5816290	6322004	D248085
5820133	6356966	D266766
5820289	6357478	D267720
5826753	6364639	D268762
5833849	6379542	D268932
5852255	6408506	D270179
5852858	6408637	D270180
5862543	6415091	D270367
5866001	6423217	D270368
5868224	6431194	D274819
5878773	6443335	D274914
5879035	6464573	D275292
5879550	6468048	D275293
5894106	6472841	D280329
5900107	6513412	D287994
5902026	6516684	D292713
5911562	6517254	D292978

PATENT NO.	PATENT NO.	PATENT NO.
D293446	D326103	D356198
D293584	D327279	D357140
D293585	D327468	D357737
D295629	D327891	D357923
D295823	D332993	D358235
D297354	D334388	D360345
D297355	D336653	D361226
D297401	D338475	D361227
D297560	D341600	D366247
D299925	D342747	D368662
D300716	D343347	D368747
D303139	D344081	D369647
D305057	D345743	D370050
D305452	D347697	D370765
D305453	D347778	D371300
D309364	D348272	D371824
D310375	D348922	D373129
D311572	D349121	D373637
D314185	D349965	D374386
D314714	D349966	D374676
D315281	D350533	D376304
D317613	D350548	D376450
D318966	D351602	D376977
D321747	D352090	D377180
D322444	D352292	D377939
D322921	D352293	D378850
D323219	D352294	RE30382
D323833	D352295	RE30968
D325092	D352509	RE34031
D325785	D352510	RE34050
D325976	D354757	RE35667
D325977	D354795	
D326042	D355201	

9. The Accused Pentair Products that Defendant has and continues (and/or has and continues to cause others) to make, use, offer for sale or sell in, and/or import into, the United States, include but are not limited to, the following products and related product components, product packaging, materials accompanying the products and product advertising, such as web-based advertising/marketing materials:

Accused Pentair Products

- i. Swimming pool, spa and aquatic equipment, including filters; control systems for pools and spas; filtration systems; pumps; pump accessories; valves; generators; heaters; landscape and water features; lights; fiber optics; lighting

technology; vacuums; scrubbers; testers; dispensers; chlorine products; automatic, robotic, pressure side, suction side and above ground cleaners; sanitizers; chlorinators; feeders; valves; jets; water effects; fittings; white goods; skimmers; flowmeters; drivers and controllers; floating chemical dispensers; poles and pole accessories; replacement parts for pool spa and aquatic equipment; skimmers; skimmer lids; thermometers; test kits; floats; float ropes; safety hooks; pool and spa signs; leaf rakes; leaf traps; maintenance kits; test reagents; intelliclor salt; chlorine/bromine feeders; fillers; starting platforms; safety vacuum release systems; deck equipment; diving towers and stands; pool rails and steps; test strip filter kits; brushes and scrubbers; poles and pole accessories; laminars and decorative accents; drains.

ii. Flow technologies including water pumps; sewage pumps; utility pumps; centrifugal pumps; industrial pumps; wastewater pumps; effluent pumps; vortex pumps; sump pumps; water removal pumps; jet pumps; discharge pumps; sewage systems; solids handling pumps; sink pumps; drill pumps; discharge pumps; submersible pumps; waterfall/pond pumps; motors; controls; booster pumps; sprinkler pumps; pressure tanks; water tanks; composite tanks; tank accessories; pump accessories; switches; adapters; covers; sewage systems; sump systems; controls; valves; lawn and garden pumps; drill pumps; condensate removal pumps; pump service kits; hvac pumps; water well products; irrigation and crop spray equipment; home water accessories; wastewater treatment products; flood protection products; marine and specialty pumps; hoses; basins and lids; submersibles; vortex pumps; grinder pumps; self-priming pumps; rail systems; basin mixers; pump vault systems; oil detection control products; drain systems; electrical accessories; high pressure accessories; tank accessories; jet/tank systems; sink pump systems; water transfer pumps; pool pumps; residential water well products; pressure boosting products; turf irrigation products; sewage lifting stations; condensate removal products; jet packages.

iii. Filtration products including water filters; faucet filters; inline filters; pitcher filters; backwash filters; undersink water filters; slim line cartridges; hydraulic cartridges; depth cartridges; pleated cartridges; glass microfiber cartridges; liquid cartridges; filtration cartridges; inhibitor cartridges; softening cartridges; blending cartridges; drinking water filter cartridges; granulated carbon activated cartridges; phosphate crystal cartridges; spun propylene cartridges; filter cartridges; replacement cartridges; tanks; membrane media; filter bags; housings; o-rings; water filtration products systems; compressed air filtration products and systems; oil conditioning products and systems; softeners; deionization products; whole house filtration systems; whole house water filters; point of use filtration systems; reverse osmosis products and systems; undersink products and systems; valves; covers; fittings; switches; backplates; cams; controls; covers; meters; timers; ion exchange and filtration media; parts and accessories for filtration products; booster pumps; test kits; wing brackets; heads; hoses; flow meters; sanitizing kits; filter bowl sleeves; drinking water systems; water chillers; cold drink systems; tank retrofit kits; pre-filter kits;

scalesticks; scale removers; steam filtration systems; filter wraps; tank accumulators; faucets; softening systems; drinking water filter systems; heater chillers; 3-way bars; faucet kits; high flow systems; sanitizing kits; filter bowl sleeves; filter usage monitors; chloramine reduction systems; deliming systems; 302E kits; tank retro fit kits; cartridge kits; steam filtration systems; VAC systems; conditioners; bromination systems; water boost systems; aircraft filters; instant hot water dispensers; water chillers; water purification systems and products; mounting brackets; control valves; ultrafiltration products; pressure vessels; filtration media; separation technologies and related components; flood control pumps; fire and HVAC pumps and products for municipal, industrial and commercial markets, including filtration and separation products, pressure vessels and membrane bioreactors; coffee filters; coffee filter systems; surge tank kits.

iii. Technical products including enclosures and housing for protection and thermal management of electrical and electronic systems; industrial cabinets; electronic cabinets; network cabinets; server cabinets; desktop cases for electronics; portable cases for electronics; tower cases for electronics; subracks; modules; panels; plug-in units; pcb accessories; retention parts; assembly kits; advanced TCA; micro TCA; advanced MC; compact PCI; VMEbus; backplanes for computer controlled systems; test adaptors; plates; mounting rails; separators; handles; hinge pin kits; mounting adaptors; bases; brackets and bracket kits; stands; sanitary suspension systems; air conditioners; filter fans; enclosure lights; locks; latches; door and mounting accessories; trays; shelves; lighting kits; purging/pressurization systems; busbar systems; grounding kits; caster kits; levelers; grid strips; grid straps; exhaust fans and vents; mobile bases; screw packages; cable managers; power cables; frames; racks; boxes; enclosures; modular enclosure systems; transformer cabinets; telephone cabinets; terminal boxes; covers; couplings; tubing; hazardous location systems; heat exchangers; blowers; impellers; brushless DC motor products; customized enclosure products for a variety of applications and industries; data network cabinets; thermoelectric coolers and dehumidifiers; control systems and software for thermal management.

10. Pentair has, and routinely retains, sophisticated legal counsel.

11. Pentair has decades of experience applying for, obtaining, licensing, and/or litigating patents.

12. Pentair knows, and at the very least reasonably should know, that the Accused Patent Markings do not cover the Accused Pentair Products, or any products whatsoever.

13. As a result of its false marking, Pentair has injured the United States Government, including its sovereign interest, and Defendant's existent and potential competitors, as well as

the general public, including Relator—a member of the general public incurring the time and expense associated with enforcement.

CLAIM

14. Relator incorporates paragraphs 1–12, as if fully set forth herein. Pentair has violated 35 U.S.C. § 292 by falsely marking, affixing, and/or advertising the Accused Patent Markings on or in connection with products, such as the Accused Pentair Products, with intent to deceive the public.

PRAYER FOR RELIEF

WHEREFORE, Relator respectfully requests that this Court enter:

- (a). A judgment in favor of Relator that Defendant has falsely marked items in violation of 35 U.S.C. § 292;
- (b). A monetary award pursuant to 35 U.S.C. § 292 in the form of a civil fine of \$500 per falsely marked article, or an alternative amount, as set by the Court, one-half of any such award to be paid to the United States;
- (c). An accounting for any falsely marked articles not presented at trial and a monetary award set by the Court for such falsely marked articles;
- (d). An award of pre-judgment and post-judgment interests on any monetary award;
- (e). An injunction prohibiting Defendant, and its officers, directors, agents, servants, employees, attorneys, licensees, successors, and assigns, and those in active concert or participation with any of them, from violating 35 U.S.C. §292; and
- (f). Any and all other relief, at law or equity, to which Relator may show itself to be entitled.

DEMAND FOR JURY TRIAL

Relator, under Rule 38 of the Federal Rules of Civil Procedure, requests a trial by jury of any issues so triable by right.

Dated: June 13, 2011

Respectfully submitted,

By: /s/ Hao Ni

Hao Ni – LEAD COUNSEL
State Bar No. 24047205
Ni Law Firm PLLC
3102 Maple Avenue, Suite 400
Dallas, TX 75201
(214) 800-2208
hni@nilawfirm.com

Tyler K. Brochstein
State Bar No. 24059490
Brochstein Law Firm, PLLC
2820 McKinnon Street, Suite 4063
Dallas, TX 75201
(214) 444-3310
tyler@brochlaw.com

Jack L. Siegel
State Bar No. 24070621
Jack L. Siegel PLLC
3530 Travis Street, Suite 421
Dallas, TX 75204
(214) 699-1498
jack@jlsiegellaw.com

**Attorneys for Relator
TEXAS IP RESEARCH, LLC**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3). Any other counsel of record will be served by electronic mail, facsimile, and/or first class mail on this date.

Dated: June 13, 2011

/s/ Hao Ni
Hao Ni

NY50991003.2